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No. 835

In The

Supreme Court of the United States

October Term, 1967

CITY OF SCRANTON and MILTON J. SHAPP,
Appellants

v.

UNITED STATES OF AMERICA et al.,
Appellees

On Appeals from the United States District Court for the Southern District of New York.

BRIEF, AMICUS CURIAE, OF THE COMMONWEALTH OF PENNSYLVANIA

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THE INTEREST OF THE COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania (Commonwealth) has a vital interest in protecting and promoting the establishment and maintenance of a viable, adequate and efficient transportation system in the public interest, and for the benefit of all the inhabitants of the Commonwealth.

The merger which is the subject of the instant appeals would appear to affect materially the character

addition, the Commission has reserved the right to impose indemnity payments retroactive to the date of consummation of the merger.

The Commonwealth is of the view that the public interest will be best served by prompt action denying the appeals from the District Court. The Commission has found that:

> "... the merger will benefit rather than harm the Commonwealth. It will assist in attracting new industries through the applicant's increased ability to meet the needs for specialized equipment, more adequate car supply, new land for industrial development and expanded transit and stop-off privileges. It will open NYC marketing areas to Pennsylvania industries and will make available improved service from Pennsylvania communities to NYC points in other States. The concentration of maintenance and construction operations in Pennsylvania should bring a net gain of employment to the Commonwealth . . ." (327 ICC, pages 492-493).

The Commonwealth is engaged in a program to promote high speed rail transportation railroad service as well as improvements in urban common carrier mass transportation by railroads and other carriers. This program is directly related to PRR since it transports more passengers, and over longer routes, than any other railroad in Pennsylvania. The improvement of the financial strength and stability of PRR as a result of its merger with NYC will make it better able to cooperate with the Commonwealth in achieving the goal of better passenger service.

Delay of the merger pending termination of the proceedings before the Commission involving protective conditions and inclusion of E-L, D & H and others in the Norfolk and Western system will unwarrantedly postpone the benefits to the Commonwealth of the PRR-NYC merger. There is always the possibility that further delay could cause the merger never to be consummated. In such event, the benefits of the merger would be permanently lost to the Commonwealth, a result which would not be in the public interest.

CONCLUSION

The Commonwealth respectfully submits that the proposed merger of PRR and NYC will be economically beneficial to the Commonwealth as shown by the findings of the Commission and the District Court. The Commission has imposed traffic conditions on the merging railroads which will afford reasonable protection to their competitors pending a final determination by the Commission whether additional protective provisions or revised indemnity provisions should be imposed on the merged railroad. The PRR and NYC have indicated to the Commission their willingness to abide by such post-merger protective conditions as may be imposed by the Commission, including retroactive indemnity payments. Under these circumstances, prompt and early consummation of the proposed merger is in the public interest and the decision of the District Court in the instant proceedings should be affirmed.

Respectfully submitted,

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